SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1218

WILLIAM A. DOSS,

Appellant,

vs.

E. E. LINDSLEY, SHERIFF OF PIATT COUNTY, ILLINOIS

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

STATEMENT AS TO JURISDICTION

WILLIAM A. DOSS,
Appellant-pro se.;
RICHARD E. WESTBROOKS,
Counsel for Appellant.

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IN THE SUPREME COURT OF THE STATE OF ILLINOIS

No. 28507

WILLIAM A. DOSS,

Petitioner,

vs.

E. E. LINDSLEY, SHERIFF OF PIATT COUNTY, ILLINOIS,

Respondent

(The Original Petition of William A. Doss of Monticello, Illinois, for a Writ of Habeas Corpus in a Certain Matter)

In Re: Petition for Leave to Appeal Said Proceedings to the Supreme Court of the United States

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JURISDICTIONAL STATEMENT

This Court has jurisdiction to review the order and judgment of the Supreme Court of Illinois, made and entered in the above entitled matter on January 9th, 1945, under Section 237 (a) of the Judicial Code because by said order and judgment that State Court held against this petitioner in an original petition for a writ of habeas corpus on his contention that he was restrained of his

liberty by and held in the custody of the respondent in violation of the First and Fourteenth Amendments to the Constitution of the United States and the rights of this petitioner to freedom of speech and of the press secured to him by said Amendments. The order and judgment of the Supreme Court of Illinois from which appeal is now sought, the Section of the Judicial Code aforesaid and the opinion of the Illinois Court in *People* v. *Doss*, 382 Ill. 307, are set out in an appendix to this Statement.

The application for leave to appeal is presented to the Honorable William J. Fulton, Chief Justice of the Supreme Court of Illinois, on this 2nd day of April, 1945, at Sycamore, Illinios.

The instant proceeding is a cause wherein final judgment rendered by the Supreme Court of the State of Illinois in a habeas corpus proceeding therein, that Court being the highest court of that State of Illinois in which a decision could be had, draws in question the validity of an order and judgment of the Circuit Court of Piatt County, in the State of Illinois, sentencing this petitioner to jail and fining him for contempt committed outside the presence of the Court on the ground that said order and judgment are repugnant and violative of the Constitution of the United States and specifically the First and Fourteenth Amendments thereof, guaranteeing the freedoms of speech and of press.

The instant proceeding involves a trial right privilege and immunity specifically set up and claimed by the petitioner under the Constitution of the United States and the Federal Bill of Rights as hereinbefore specifically stated.

It is alleged in the information that the petitioner was guilty of contempt—if any contempt was committed, it was indirect—because he delivered and caused to be delivered in the ordinary course of the mails, copies of the Liberty

Press, a publication sponsored by this petitioner, to a Grand Jury of Piatt County (Orig. Rec., p. 28); the contempt was not charged on the theory that some language in the Liberty Press was "intemperate in the extreme", as seems to have been the belief of the Supreme Court of Illinois as shown in the opinion of that Court in *People* v. *Doss*, 382 Ill. p. 307, a view probably adopted in the case in that Court from which appeal is now sought to be prosecuted (Orig. Rec., p. 265). That opinion is set forth in an appendix hereto. The portions of the articles in the Liberty Press selected for inclusion in the information are critical of the State's Attorney (Orig. Rec., p. 34) and of certain private persons mentioned by name. They charge that the State's Attorney is not a truthful man and that he is not impartial in the matter of initiating criminal prosecutions. They show that a special prosecutor was named to handle certain matters before the Grand Jury, but no attack is made on him in the articles set forth in the information. On the contrary, petitioner commended him (Orig. Rec., p. 134). Neither is there any question raised or doubt insinuated concerning the integrity of the Judges, and there is no appeal to Grand Jurors to depart from their duties as Grand Jurors.

The matters involved in this case and on this proposed appeal are of a substantial nature. They raise questions which involve (1) the right of a person to publish and circulate charges against public officers concerning the manner in which they perform their official duties (Orig. Rec., p. 136) and for the publication of which such person is expressly willing to answer fully in the Civil Courts under the laws enforced for the protection of good character against defamation (Orig. Rec., pp. 131, 141, 143 and passim) and (2) whether free speech and a free press may be intimidated or throttled through the indirect contempt process without any findings (Orig. Rec., pp. 271-2) that

the exercise of these rights, in the manner charged in the information, constituted such great and present danger to a paramount public interest, namely, the unimpeded administration of public justice, as to warrant and justify restriction of such rights by fining and imprisoning the author of the articles.

In *Edward G. Budd Mfg. Co.* v. *National Labor Relations Board* (1942), 142 Fed. (2d) 922, 928, the Circuit Court of Appeals for the Third Circuit condemned the use of "insubstantial findings of fact screening reality" in a contempt proceeding. How much more serious it is when there are *no findings of fact* in a case where, as here, freedom of speech and of the press is sought to be controlled through the process of indirect contempt! The petitioner objected in the State Courts (Orig. Rec., pp. 271-2) to the omission to make findings of fact. The effect of this omission is obviously to make it impossible for a reviewing court to pass upon substantial and vitally important questions of Constitutional law involving fundamental rights of petitioner under and secured by the United States Constitution, namely, whether the writing, publication and circulation of the Liberty Press, in the manner charged in the information (Orig. Rec., pp. 27-42) constituted such great and present danger to a paramount public interest, to-wit, the administration of public justice, as to justify or warrant restrictions upon the rights of free speech and a free press as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States. This question was expressly raised and overruled in the State Court (Orig. Rec., pp. 271-2). The State Courts of Illinois may not destroy the Constitutional Rights of this petitioner by refusing to make findings of facts, without which the Courts of the United States, including the Supreme Court thereof, may be hindered or prevented from passing upon substantial and vital questions of Federal Constitutional law in-

volving such rights as free speech, a free press, and the liberty of a citizen when sought to be destroyed by imprisonment under an order or judgment of a State Court for indirect contempt.

The following decisions hold this Court has the jurisdiction and the power on appeal from the adverse judgment of a State Court in a habeas corpus proceeding, to correct the order and judgment of the Supreme Court of Illinois from which the appeal here is sought; *People* v. *Zimmerman* (1928), 278 U. S. 63, 49 S. Ct. 61; and the following decisions show the power and jurisdiction in this Court to correct rulings of State Courts on the subject of free speech and a free press and sustain the claim of the petitioner that a substantial question is involved in this case; *Whitney* v. *California,* 274 U. S. 357, especially concurring opinion of Justice Brandeis; *Bridges* v. *State of California* (1941), 314 U. S. 252; *Grosjean* v. *American Press Co.* (1936), 297 U. S. 233, 249; *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, especially p. 630, where the Court said with reference to the rights secured by the First Amendment to the Constitution of the United States as transmitted through the Fourteenth Amendment:

> "They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect * * *. They may not be restricted in order to protect private rights *susceptible to redress by other means.*" (Emphasis supplied.) *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, 639, 641.

This petitioner urged that to punish him for publishing or circulating the words and charges in the information for contempt, would be an invasion of his right under the First and Fourteenth Amendments to the Constitution of the United States, (1) in the Liberty Press, (2), at all stages

of the contempt hearing before the Judge of the Circuit Court of Piatt County (Orig. Rec. p. 12), (3) in the Supreme Court of Illinois in the case from the judgment in which an appeal is sought to this Court (Orig. Rec. pp. 2-3); and that in all these stages and in both the State Courts petitioner contended in his answer to the amended information for contempt (Orig. Rec., p. 217), in argument and in printed briefs, that his right to speak and write his sentiments, as that right is guaranteed under the First and Fourteenth Amendments to the Constitution of the United States, was violated, infringed and abridged by the contempt order of the Circuit Court of Piatt County, Illinois (Orig. Rec. p. 217). In each and every stage in the Court of first instance, namely the Circuit Court of Piatt County (Orig. Rec. p. 264, par. 3), and in the Supreme Court of Illinois (Orig. Rec., p. 278), said Courts ruled against your petitioner upon each and all of his contentions as above set forth.

The Supreme Court of Illinois did not file an opinion in support of or explanation of its judgment from which an appeal is now sought to this Court and petitioner believes that the Supreme Court of Illinois, in denying the Application of petitioner for a writ of habeas corpus in the case at bar, relied on its holding on the Federal questions of Constitutional law respecting the freedoms of speech and press, as did the State's Attorney in his argument and motion (Orig. Rec., pp. 263, 271-2) in *People* v. *Doss*, 382 Ill. 307, where, on the questions now raised and in the same manner, the Court said at page 315:

> "The constitutional guaranties invoked by defendant were never intended to and do not sanction such conduct as exhibited by defendant. These rights are not absolute. Neither liberty of the press nor freedom of speech have yet become license."

Stuart v. *The People* (1842) 4 Ill. 399, is a case remarkably reminiscent of *Bridges* v. *California*. In that case the defendant was charged with contempt for publishing critical comment on the conduct of a juror while actually sitting in a criminal case. If contempt, it was constructive or indirect. The language of the court is lucid, its grasp of the fundamental principles of liberty, as we in America have understood them, is firm, and its defense of these principles is worthy of the best judicial traditions of our country.

Judge Breese, a great jurist in Illinois history, often compared to the famous Chief Justice Shaw of Massachusetts, said:

> "Our Constitution has provided that the printing presses shall be free to every person who may undertake to examine the proceedings of any and every department of the Government, and he may publish the truth, if the matter published is proper for public information, and the free communication of thoughts and opinions is encouraged.
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> "The contempt, in this case, was by a printer of a newspaper, remarking on the conduct of an individual juror, who, whilst he was engaged in the trial of a capital case, and whilst separated from the public, and in charge of the officer of the Court, was furnishing articles for daily publication in a rival newspaper; and in admitting a communication from a correspondent, calculated to irritate the presiding judge of the Court, though not reflecting upon his integrity, or in any way impeaching his conduct. The paragraphs and communication published had no tendency to obstruct the administration of justice, nor were they thrust upon the notice of the Court, by any act of the plaintiff in error.
>
> "The right to punish for contempts committed in the presence of the Court is acknowledged by our statute; (1) and while it affirms a principle that is inherent in all courts of justice, to defend itself when attacked, as the individual man has a right to do for his own preser-

vation, it may also, with great propriety, be regarded as a limitation upon the power of the courts to punish for any other contempts. In this power would necessarily be included all acts calculated to impede, embarrass or obstruct the Court in the administration of justice. Such acts would be considered as done in the presence of the Court. So of rules entered by the Court prohibiting the publication of the evidence or other matters while the case is pending and undecided. The limitation of the power to such cases only, is better calculated to strengthen the judiciary, and fasten it in the affections and esteem of the people, who have so large a stake in its purity and efficiency, than the enlarging the power to the extent claimed.

"An honest, independent, and intelligent court will win its way to public confidence, in spite of newspaper paragraphs, however pointed may be their wit or satire, and its dignity will suffer less by passing them by unnoticed, than by arraigning the perpetrators, trying them in a summary way, and punishing them by the judgment of the offended party.

It does not seem to me necessary, for the protection of courts in the exercise of their legitimate powers, that this one, so liable to abuse, should also be conceded to them. It may be so frequently exercised, as to destroy that moral influence which is their best possession, until, finally, the administration of justice is brought into disrepute. Respect to courts cannot be compelled; it is the voluntary tribute to the public to worth, virtue, and intelligence, and whilst they are found upon the judgment seat, so long, and no longer, will they retain the public confidence."

Through oversight, doubtless, no reference is made to this great case in *The People of the State of Illinois* v. *William A. Doss*, (1943) 382 Ill. 307.

Prayer for Reversal

For which errors the plaintiff, William A. Doss, prays that the said judgment of the Supreme Court of the State of

Illinois, dated and entered on January 9th, 1945 in the above entitled cause, be reversed, and a judgment rendered in favor of the said plaintiff, and for costs.

WILLIAM A. DOSS,
Petitioner—Pro Se.

RICHARD E. WESTBROOKS,
Attorney for Petitioner
Address: 3000 South State Street,
Chicago, Illinois.